

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON**

**ELIZABETH RETAIL PROPERTIES
LLC; JUDITH L. ANSTETH, INC.; and
JUDITH ARNELL**, an individual,

Plaintiffs,

v.

KEYBANK NATIONAL ASSOCIATION,
a national banking association,

Defendant.

Case No. 3:13-cv-02045-HU

OPINION AND ORDER

Michael H. Simon, District Judge.

United States Magistrate Judge Dennis J. Hubel issued Findings and Recommendation in this case on November 17, 2014. Dkt. 36. Judge Hubel recommended that (1) Defendant's Request for Judicial Notice (Dkt. 7) be granted; (2) Defendant's Supplemental Request for Judicial Notice (Dkt. 26) be granted; and (3) Defendant's Motion to Dismiss be granted in part and denied in part.

Under the Federal Magistrates Act ("Act"), the Court may "accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate." 28 U.S.C.

§ 636(b)(1)(C). If a party files objections to a magistrate's findings and recommendations, "the

court shall make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made.” *Id.*; Fed. R. Civ. P. 72(b)(3).

For those portions of a magistrate’s findings and recommendations to which neither party has objected, the Act does not prescribe any standard of review. *See Thomas v. Arn*, 474 U.S. 140, 152 (1985) (“There is no indication that Congress, in enacting [the Act], intended to require a district judge to review a magistrate’s report to which no objections are filed.”); *United States v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003) (en banc) (holding that the court must review de novo magistrate’s findings and recommendations if objection is made, “but not otherwise”). Although in the absence of objections no review is required, the Act “does not preclude further review by the district judge[] *sua sponte* . . . under a *de novo* or any other standard.” *Thomas*, 474 U.S. at 154. Indeed, the Advisory Committee Notes to Fed. R. Civ. P. 72(b) recommend that “[w]hen no timely objection is filed,” the Court review the magistrate’s recommendations for “clear error on the face of the record.”

Defendant timely filed an objection (Dkt. 38) to which Plaintiffs responded (Dkt. 39). Defendant objects to portions of the Findings and Recommendation respecting Plaintiffs’ claim for breach of the implied covenant of good faith and fair dealing. Defendant also requests clarification of Judge Hubel’s recommendations respecting standing of Plaintiffs Judith Arnell and Judith L. Ansteth Jeweler, Inc.

The Court has reviewed *de novo* Judge Hubel’s Findings and Recommendation, as well as Defendant’s objections, Plaintiffs’ response, and the underlying briefing in this case. The Court agrees with Judge Hubel’s reasoning and adopts the Findings and Recommendation. Furthermore, the Court has reviewed the portions of the Findings and Recommendation respecting Plaintiffs’ standing, and finds that further clarification is unnecessary.

For those portions of Judge Hubel's Findings and Recommendation to which neither party has objected, this Court follows the recommendation of the Advisory Committee and reviews those matters for clear error on the face of the record. No such error is apparent.

CONCLUSION

The Court ADOPTS Judge Hubel's Findings and Recommendations. Dkt. 36. Defendant's Request for Judicial Notice (Dkt. 7) and Supplemental Request for Judicial Notice (Dkt. 26) are GRANTED. Defendant's Motion to Dismiss (Dkt. 23) is GRANTED in part and DENIED in part. Plaintiffs' claims for wrongful foreclosure, bad faith foreclosure, damage to business reputation, and trespass are DISMISSED with prejudice. Plaintiffs Judith L. Ansteth, Inc. and Judith Arnell's claims for defamation are DISMISSED with leave to replead. Defendant's Motion to Dismiss is DENIED as to all other claims.

IT IS SO ORDERED.

DATED this 26th day of January, 2015.

/s/ Michael H. Simon
Michael H. Simon
United States District Judge